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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 IMMANUAL C. PRICE,

12 Plaintiff,

13 v.

14 DEPUTY ALEXANDRU GALIU,  
15 Deputy Sheriff in San Diego, et al.,

16 Defendants.

Case No.: 3:16-cv-00412-BEN-PCL

**ORDER GRANTING DEFENDANT’S  
MOTION TO DISMISS SECOND  
AMENDED COMPLAINT**

17 Before the Court is the Motion to Dismiss Plaintiff’s Second Amended Complaint  
18 filed by Defendant Deputy Alexandru Galiu. (Docket No. 57.) Plaintiff did not oppose  
19 or otherwise respond to Defendant Galiu’s Motion. The Court finds the Motion suitable  
20 for determination on the papers without oral argument, pursuant to Civil Local Rule  
21 7.1.d.1. For the reasons set forth below, Defendant’s Motion is **GRANTED**.

22 **BACKGROUND<sup>1</sup>**

23 On February 28, 2014, while “Plaintiff was a pretrial detainee” at the San Diego  
24 County Jail,” he was “ordered to undress as part of the initial booking process.” (SAC at  
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27 <sup>1</sup> The following overview of the relevant facts is drawn from the allegations of  
28 Plaintiff’s Second Amended Complaint (“SAC”). (Docket No. 56.) The Court is not  
making findings of fact.

1 p. 3.)<sup>2</sup> At that time, Plaintiff was alone in a “dress out room” with Corporal Kyle Dobson  
2 and a second deputy. (*Id.*) Once Plaintiff was nude and facing away from the deputies,  
3 he was ordered to “spread the buttocks and cough.” (*Id.*) Plaintiff complied, after which  
4 one of the deputies “yelled, demanding that Plaintiff put his hands behind his back.” (*Id.*)  
5 Plaintiff did not comply with this order, and instead “grabbed the small bindle of  
6 marijuana from his buttocks” and put it in his mouth “while facing the deputies.” (*Id.*)

7 Dobson “rush[ed] toward Plaintiff” while yelling “spit out the drugs!” (*Id.*)  
8 (internal quotation marks omitted.) Plaintiff was unable to swallow the drugs because  
9 Dobson “established a tight grip” around his throat and “drove [him] backward” toward a  
10 bench against the wall. (*Id.*) “Plaintiff was forced into a sitting position and the struggle  
11 cause the bindle to become lodged in Plaintiff’s throat.” (*Id.*) At first, “plaintiff began to  
12 try and gain enough space between Dobson’s hand and Plaintiff’s throat to spit the bindle  
13 up.” (*Id.* at pp. 3-4) Unsuccessful, “Plaintiff very momentarily flailed arms and legs in a  
14 panic, from lack of oxygen.” (*Id.* at p. 4.) “Plaintiff then stopped flailing, hoping for  
15 mercy, and realizing that [his] attempt[] to swallow the bindle was a bad decision.” (*Id.*)

16 While Dobson and the second deputy “took turns sticking their fingers in  
17 Plaintiff’s mouth,” Plaintiff alleges he suddenly “felt a solid punch to the left side” from  
18 Defendant Galiu. (*Id.*) Plaintiff further alleges Defendant Galiu “slammed [him] to the  
19 floor where [Defendant Galiu] proceeded to knee Plaintiff in the nose several times.”  
20 (*Id.*) Plaintiff “coughed up the bindle upon being slammed to the floor by Galiu.” (*Id.*)

21 Plaintiff asserts Defendant Galiu’s actions caused him to sustain a “serious orbital  
22 fracture” and a fractured nose. (*Id.*)

### 23 **PROCEDURAL HISTORY**

24 On February 16, 2016, Plaintiff, proceeding *pro se* and *in forma pauperis*, brought  
25 this action under 42 U.S.C. § 1983, alleging a federal civil rights claim for cruel and  
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27 <sup>2</sup> All references to page numbers in the parties’ documents are to the page numbers  
28 generated by the CM/ECF system.

1 unusual punishment against Defendant Galiu. (Docket No. 1.) After this Court granted  
2 in part both Defendant Galiu's motion to dismiss for failure to state a claim and  
3 Plaintiff's motion to amend his pleading (Docket No. 36), Plaintiff timely filed a First  
4 Amended Complaint. (Docket No. 38.)

5 On August 8, 2017, this Court granted Defendant Galiu's second motion to dismiss  
6 Plaintiff's First Amended Complaint for failure to state a claim without prejudice and  
7 with leave to amend. (Docket No. 55.) Plaintiff timely filed the operative SAC.  
8 Defendant Galiu now moves for a third time for dismissal of Plaintiff's SAC for failure to  
9 state a claim. (Docket No. 57.)

### 10 **LEGAL STANDARD**

11 Under Federal Rule of Civil Procedure 12(b)(6), dismissal is appropriate if, taking  
12 all factual allegations as true, the complaint fails to state a plausible claim for relief on its  
13 face. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556–57 (2007);  
14 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (requiring plaintiff to plead factual content  
15 that provides “more than a sheer possibility that a defendant has acted unlawfully”).  
16 Under this standard, dismissal is appropriate if the complaint fails to state enough facts to  
17 raise a reasonable expectation that discovery will reveal evidence of the matter  
18 complained of, or if the complaint lacks a cognizable legal theory under which relief may  
19 be granted. *Twombly*, 550 U.S. at 556. “A claim is facially plausible ‘when the plaintiff  
20 pleads factual content that allows the court to draw the reasonable inference that the  
21 defendant is liable for the misconduct alleged.’” *Zixiang Li v. Kerry*, 710 F.3d 995, 999  
22 (9th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678). “Threadbare recitals of the elements of  
23 a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556  
24 U.S. at 678.

25 The Court must assume the truth of the facts presented in a plaintiff's complaint  
26 and construe inferences from them in the light most favorable to the nonmoving party  
27 when reviewing a motion to dismiss under Rule 12(b)(6). *Erickson v. Pardus*, 551 U.S.  
28 89, 94 (2007). The complaint is considered in its entirety, “as well as other sources

1 courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular,  
2 documents incorporated into the complaint by reference, and matters of which a court  
3 may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322  
4 (2007).<sup>3</sup> Additionally, “a document filed pro se is ‘to be liberally construed,’ and ‘a pro  
5 se complaint, however inartfully pleaded, must be held to less stringent standards than  
6 formal pleadings drafted by lawyers.’” *Id.* (quoting *Estelle v. Gamble*, 429 U.S. 97, 106  
7 (1976)).

## 8 DISCUSSION

9 As he did in both of his prior motions to dismiss, Defendant Galiu asserts that  
10 Plaintiff’s claim against him is barred as an impermissible collateral attack on his  
11 criminal conviction for California Penal Code section 69 (resisting an officer with force)  
12 under *Heck v. Humphrey*, 512 U.S. 477 (1944). As noted above, Plaintiff did not oppose  
13 or otherwise respond to the instant motion. Even construing the allegations of the SAC  
14 liberally, the Court agrees with Defendant Galiu that Plaintiff’s claim is barred by *Heck*.

15 “*Heck* precludes a Section 1983 claim based on actions which would ‘render a  
16 conviction or sentence invalid’ where that conviction has not been reversed, expunged, or  
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19 <sup>3</sup> Defendant attached four documents in support of his motion to dismiss (Docket  
20 No. 57-2, Exs. A-D), which he asserts are judicially noticeable pursuant to Federal Rules  
21 of Evidence Rule 201. The four documents, which Plaintiff did not object to, appear to  
22 be certified copies of the criminal complaint for case number SDC255402 against  
23 Plaintiff (*Id.*, Ex. A), Plaintiff’s plea form for case number SDC255402 (*Id.*, Ex. B), the  
24 California Superior Court’s Judgment Minutes on Sentencing for case number case  
25 number SDC255402 (*Id.*, Ex. C), and an excerpt of the Reporter’s Transcript of  
26 Proceedings for case (*Id.*, Ex. D). Because these documents appear to directly pertain to  
27 the matters at issue, the Court shall take judicial notice of them. Fed. R. Evid. 201;  
28 *Daugherty v. Wilson*, No. 08CV408-WQH-BLM, 2009 WL 2579670, at \*10 (S.D. Cal.  
Aug. 18, 2009) (“Generally, courts ‘will not consider facts outside the record developed  
before the district court.’ . . . However, courts ‘may take notice of proceedings in other  
courts, both within and without the federal judicial system, if those proceedings have a  
direct relation to the matters at issue.’”) (quoting *United States ex rel. Robinson  
Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992)).

1 called into question by issuance of a writ of habeas corpus.” *Benavides v. City of Arvin*,  
2 No. F CV 12-0405 LJO GSA, 2012 WL 1910259, at \*4 (E.D. Cal. May 25, 2012) (citing  
3 *Heck*, 512 U.S. at 486). In other words, *Heck* requires dismissal of a Section 1983 claim  
4 “if a criminal conviction arising out of the same facts stands and is fundamentally  
5 inconsistent with the unlawful behavior for which section 1983 damages are sought[.]”  
6 *Id.* (quoting *Smithhart v. Towers*, 79 F.3d 951, 952 (9th Cir. 1996) (per curiam)). A  
7 district court determining whether the *Heck* doctrine applies must consider whether a  
8 plaintiff’s success in his or her Section 1983 suit would “‘necessarily imply’ or  
9 ‘demonstrate’ the invalidity of the earlier conviction or sentence[.]” *Beets v. Cnty. of Los*  
10 *Angeles*, 669 F.3d 1038, 1042 (9th Cir. 2012) (quoting *Heck*, 512 U.S. at 487).

11 Here, Plaintiff’s claim, as alleged in the SAC (and in similar variations in the  
12 Complaint and First Amended Complaint (Docket Nos. 1, 38)), is barred by *Heck*.  
13 According to the criminal complaint, Plaintiff was charged with, *inter alia*, resisting an  
14 officer with force under California Penal Code section 69 (Count 1), and battery upon  
15 Defendant Galiu (Count 3). (Docket 57-2, Ex. A.) Count 1 was based on the following  
16 allegations:

17 On or about February 28, 2014, IMMANUEL CHRISTIAN  
18 PRICE did unlawfully attempt by means of threats and violence  
19 to deter and prevent another who was then and there an  
20 executive officer from performing a duty imposed upon such  
21 officer by law, and did knowingly resist by the use of force and  
22 violence said executive officer in the performance of his/her  
23 duty, in violation of PENAL CODE SECTION 69.

24 (*Id.* at p. 5.) Count 3 was based on the following allegations:

25 On or about February 28, 2014, IMMANUEL CHRISTIAN  
26 PRICE did willfully and unlawfully use force and violence  
27 upon the person of Deputy Galiu when said defendant,  
28 IMMANUEL CHRISTIAN PRICE knew and reasonably  
should have known that said person was a peace officer then  
and there engaged in the performance of his/her duties, in  
violation of PENAL CODE SECTION 243(b).

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1 (*Id.*) The incidents giving rise to these charges occurred on the same date the alleged  
2 Section 1983 violation against Plaintiff occurred. (*Id.*; SAC at pp. 3-4.) Ultimately,  
3 Plaintiff pled guilty to Count 1 and another count for possession of a controlled substance  
4 while in jail/prison. (Docket 57-2, Exs. A, B.)

5 Although Count 1 does not specifically identify Defendant Galiu as the officer  
6 resisted, the SAC indicates that Plaintiff's conviction for resisting an officer arises out of  
7 the same facts as the incident for which he now seeks damages. Throughout the entire  
8 episode identified by the SAC, Plaintiff admits he intentionally physically resisted the  
9 commands of at least three deputies who attempted to secure his compliance. (*See* SAC  
10 at pp. 3-4.) Once again, the SAC fails to articulate facts that plausibly establish that  
11 Plaintiff's claim arises from either a distinct incident within a continuous chain of events,  
12 *Yount v. City of Sacramento*, 43 Cal. 4th 885, 899 (2008), or is distinct temporally and  
13 spatially from the incident which led to his conviction for resisting an officer, *Smith v.*  
14 *City of Hemet*, 394 F.3d 689,699 (9th Cir. 2005). Moreover, Plaintiff did not allege that  
15 his conviction has been "reversed, expunged, or called into question by issuance of a writ  
16 of habeas corpus." *Benavides*, 2012 WL 1910259, at \*4. As a result, the Court finds  
17 Plaintiff's claim against Defendant Galiu barred under *Heck*.

18 Accordingly, Defendant's motion to dismiss for failure to state a claim is  
19 **GRANTED**. Furthermore, because Plaintiff has failed his third attempt to meet his  
20 burden to state facts to state a plausible claim for relief, and did not respond to  
21 Defendant's motion, the SAC is **DISMISSED without leave to amend**.

22 **IT IS SO ORDERED.**

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24 Dated: December 12, 2017

25   
26 Hon. Roger T. Benitez  
27 United States District Judge  
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